

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE NINETEENTH DAY OF AUGUST
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

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WRIT PETITION NO : 18311 of 2005

Between:

Marvel Granites, rep by Managing Partner, S. Kishore babu S/o Venkateswara
Rao, R/o Throvagunta, Ongole, Prakasam District

..... PETITIONER

AND

The Regional Provident Fund Commissioner, Employees Provident fund
Organization
Sub- regional Officer, 3r land, Krishna Nagra, Guntur-06

.....RESPONDENT

ORDER:

The Assistant Provident Fund Commissioner (Enforcement), Guntur by the proceedings dated 16.05.2005, on an analysis of the facts and in exercise of the powers under Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as “the Act”) came to the conclusion that the petitioner’s firm and two other establishments i.e. M/s Sri Priya Granites and M/s Sri Sai Teja Enterprises functionally, geographically and on the basis of unity of ownership as well as financial integrity constitute one establishment though having discrete structural mechanisms and accordingly held that on the basis of the employment particulars of the three firms put together the establishments should be treated as one and be covered under the provisions of the Act.

2. Aggrieved thereby, the petitioner preferred an appeal to the Employees Provident Fund Appellate Tribunal under the provisions of Section 7(I) of the

Act along with the application for interim stay of all further proceedings pursuant to the order of the Regional Provident Fund Commissioner, Employees Provident Fund Organisation, Guntur, dated 16.05.2005. The Tribunal by the order dated 28.06.2005 (impugned herein) recorded a *prima facie* conclusion that the petitioner establishment and the other establishments mentioned above have been rightly clubbed by the primary authority, in view of the circumstances recorded in the appellate Tribunal's order dated 28.06.2005. Therefore, there is no case for interdiction of the assessment proceedings under Section 7(A)(1)(b) of the Act. Aggrieved by the order of the Tribunal declining to grant of interim stay of further proceedings, the writ petition is filed.

3. The substantive grievance of the petitioner with regard to the determination by the assessing authority is that the identity of the three establishments is pending consideration in the appeal before the Appellate Tribunal. In the context of the petitioner's application for interim relief, the Appellate tribunal had on recording a *prima facie* satisfaction, declined the grant of interim relief. The appellate body i.e. E.P.F. Appellate Tribunal enjoins a spectrum of discretion regarding appreciation of the relevant and jurisdictional facts and such satisfaction(particularly interim) is normally not susceptible to judicial review as it is not a final determination and no irreparable prejudice is caused to the petitioner, even if the petitioner is assessed pending the appeal and called upon to pay contributions on the basis of the unity of the establishments as found by the assessing authority. The order even if inconvenient to the petitioner in the interim, could be rectified if the appellate decision goes in his favour. These

circumstances do not warrant interference with an interim order passed by the Tribunal within the spectrum of its considerable discretion.

4. On the above analysis, this Court is not inclined to interfere with the discretion exercised by the Appellate Tribunal. There are no merits in the writ petition. Accordingly, the writ petition is dismissed. However, having regard to the facts and circumstances of the case, the Appellate Tribunal is directed to consider and dispose of the appeal expeditiously, in any event, within a period of four (4) months from the date of receipt of a copy of this order. No costs.

19-08-2005

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